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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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MAY - 9 2005

Federal Communications Commission
 Office of Secretary

In the Matter of)
)
 Amendment of Section 73.202(b),) **MB Docket No. 05-111**
 Table of Allotments,)
 FM Broadcast Stations)
)
 (Cumberland Head, NY))

To: **The Secretary**, for inclusion in Docket File
 and forwarding to Assistant Chief, Audio Division, Media Bureau

COMMENTS OF SARANAC LAKE RADIO, LLC

1. Saranac Lake Radio, LLC ("SLR") hereby submits these Comments in response to the Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding, DA 05-705, released March 18, 2005. SLR is the licensee of Stations WYZY(FM) and WNBZ(AM), Saranac Lake, New York, and has an interest in this proceeding because Cumberland Head is located in the WYZY service area, and a new station at Cumberland Head will compete with WYZY for listeners.

2. The proposal should not be adopted because the technical analysis provided by Puopolo with regard to Canadian stations is incorrect, and the proposal does not come even close to meeting required mileage separations and interference requirements with respect to Canadian stations. In addition, the long track record of the proponent, Dana J. Puopolo ("Puopolo"), establishes that he cannot be relied upon to file an application for a construction permit and to bid at auction for a station on the new channel, regardless of what he says in his own Comments.

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3. In order for an FM channel to be allotted near the Canadian border, a proponent must show adequate spacing to Canadian stations and allotments or that no interference will be caused to Canadian stations within Canadian territory. The petition for rule making in this proceeding indicates that there is considerable short-spacing to Canadian stations but that all interference will occur only on the U.S. side of the border. Both the amount of the short-spacing and the area of interference are misstated.

4. Attached hereto is as Exhibit 1 is a print-out¹ a showing that the short-spacing is much more severe than Puopolo has shown, that interference will be caused to Canadian stations inside Canada in violation of the nation's treaty obligations, and that interference to a Cumberland Head station would damage critical service to the station's own community of license. The proposal is also short-spaced to the allotment reference point of a U.S. station. Specifically:

a. Puopolo proposes the allotment of Channel 264A. He states that the required separation to co-channel CBF-FM, Channel 264C1, Montreal, Quebec, is 101 km, and the actual separation is 90 km.² However, Section 73.207(b)(2) of the Rules states that the required separation is 239 km, and the exchange of Diplomatic Notes with Canada states that the requirement is 243 km.³ Thus the short-spacing is at least 149 km, which is highly unlikely to be accepted by the Government of Canada.

¹ All engineering supporting materials attached to these Comments were supplied through Skywaves and Dataworld, Inc.

² SLR agrees that the actual spacing is 90 km.

³ See Public Notice DA-1595, released July 28, 1997.

b. The proposed allotment is also first-adjacent to WWFY, Channel 265C3, Middlebury, VT. Puopolo claims that his proposal is fully spaced to WWFY, but that is so only to the WWFY transmitter site. The attached print-out shows that it is 16.9 km short-spaced to the WWFY reference point, which again is disqualifying.

5. The map attached hereto as Exhibit 2 shows that the interfering 40 dBu (F(50,10)) contour of CBF-FM will extend far beyond the community of license at Cumberland Head and will in fact encompass the entire, supposedly protected, 60 dBu (F(50,50)) contour of a Cumberland Head station. Thus the proposed station will not provide interference-free service within its own primary service area.⁴

6. The same map shows that the interfering 34 dBu (F(50,10)) contour of the proposed Cumberland Head station will not only cover most of the protected 54 dBu contour of CBF-FM but will actually encompass the CBF-FM transmitter site, a situation that Canada cannot be expected to tolerate and that violates the prohibition on interfering with Canadian stations inside the Canadian border.

7. The analysis attached hereto as Exhibit 3 shows that the predicted interfering CBF-FM signal at the proposed Cumberland Head allotment point is 57.2 dBu, thereby limiting the proposed station to service at that location within the station's 77.2 dBu contour based on a 20

⁴ A station is expected to provide usable service within most, if not all, of its protected 60 dBu contour. That is why when alternative prediction methods, such as the Longley-Rice method, are used to predict a station's 70 dBu principal city grade contour, those methods may not be applied outside the 60 dBu contour predicted by the FCC method.

dB protection requirement. Thus the proposed new station could not even provide interference-free service within its 70 dBu principal city coverage contour.⁵

8. The circumstances discussed in Paragraphs 4-7, *supra*, warrant dismissing the proposal on technical grounds alone.⁶

9. Even if the proposal is not dismissed on technical grounds, it must be dismissed based on the unreliability of the proponent's commitment to apply for and to build a station. There is no question that before a new channel will be allotted, the proponent of a channel allotment must "restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly."⁷ The Commission regularly terminates allotment proceedings without making the proposed allotment where the proponent does not make the requirement commitment.⁸ The reason is simple: allotments are made to be used. There is no point in making an allotment that will not be utilized promptly, as that would leave spectrum unoccupied that could be used elsewhere.

⁵ See Section 73.315(a) of the Rules. Section 73.315(c) suggests that the Commission's intent is to keep the entire 60 dBu contour interference-free. Exhibit 3 also shows that the Cumberland Head interfering signal at the CBF-FM transmitter site will be 39.1 dBu. These figures are based on an antenna height of 251 m. above average terrain for CBF-FM. CBF-FM has the right to increase its HAAT to 300 meters, which would create even more interference to a Cumberland Head station.

⁶ While it is conceivable that a highly directional antenna might confine interference to the U.S. side of the border, it would only exacerbate the inability of the Cumberland Head station to provide any reasonable amount of interference-free service to the U.S. public.

⁷ NPRM, at p. 6 (Appendix, par. 2).

⁸ See, e.g., *Kula*, HI, 12 FCC Rcd 2472 (MB 1997) and numerous other cases citing *Kalispell*, MT, 6 FCC Rcd 1281 (1991).

10. Puopolo has already filed the prescribed initial comments in this proceeding and has made the required commitment.⁹ However, that commitment cannot be relied on, and must be disregarded, because Puopolo has made the same commitment in scores of other allotment rule makings but has demonstrated his unwillingness or inability to bid at auction for the channels for which he committed to apply.

11. Puopolo is a prolific proponent of FM allotments. SLR has identified more than 60 such proposals, based only a simple search of the Commission's Electronic Comment Filing System ("ECFS"). The Commission continues to propose allotments that Puopolo has requested. *See, e.g., Mojave, CA*, MB Docket No. 05-109, DA 05-704, rel. March 18, 2005; *Americus and Emporia, KS*, MB Docket No. 05-139, DA 05-756, rel. March 23, 2005; and *Steamboat Springs, CO*, MB Docket No. 050193, DA-05-768, rel. March 25, 2005

12. In Auction No. 37, Puopolo should have fulfilled his commitment for each of the channels allotted at his instigation that were offered for bidding. An examination of applications in that auction reveals that Puopolo was a principal in LP Broadcasting Partnership, which applied for 26 channels. The total number up front dollars needed for these channels, even taking into account the applicant's 25% bidding credit, exceeded \$900,000. However, LP Broadcasting Partnership paid only \$127,500 up front, making it eligible to bid and acquire on far fewer than the 26 channels for which it applied, even if there were no competing bidders and the channels were sold for the minimum up front payment. That means that in a future auction, Puopolo's company may not be able to participate by bidding on the channel proposed in this proceeding.

⁹ See "Supporting Comments of Petitioner," filed April 20, 2005 ("Supporting Comments").

13. This is not the first time that SLR has questioned Puopolo's intent or ability to file applications and to build all the stations on allotments he has requested. In *Saranac Lake and Westport, New York*,¹⁰ Puopolo proposed the allotment of Channel 276A at Saranac Lake, New York, SLR filed comments noting that Puopolo's commitment to file an application and build a station should be deemed suspect, because he could not possibly have the financial resources to acquire permits for and to construct stations on all the channels for which he had petitioned. The Commission disregarded SLR's comments on the ground that financial qualifications are not at issue at the rule making stage, and "SLR has not provided any information showing that petitioner is unable to participate in the auction for the channel..."¹¹ The Commission went on to say, however, that "any party, including a petitioner, who states during the rule making process an intention to file a construction permit application and to operate the station, without the actual intent to do so, is subject to Commission sanctions."¹²

14. The proof is in the performance. Puopolo applied for Channel 296A at Saranac Lake, but he did not establish his financial ability to bid for the channel. Thus SLR's comments in the earlier were justified, and SLR's comments in this proceeding are even more justified based on the actual history of Auction No. 37.

16. In light of the foregoing, the Commission should terminate this proceeding without making the proposed allotment based on the gross technical deficiencies in the proposal. The Commission should further investigate the practices of Puopolo and others who have filed

¹⁰ MM Docket No. 99-83, 15 FCC Rcd 10325 (DA 00-945) (MB 2000).

¹¹ *Id.*, at par. 5.

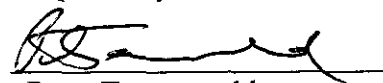
¹² *Id.*

repeated allotment petitions without being able to fulfill their commitments to acquire construction permits. Even if the Commission finds a way to justify the proposal on technical grounds, and even if someone else files an expression of interest in a channel at Cumberland Head, the Commission should terminate this proceeding without action, and require the other party to initiate its own proceeding. That action would send a clear message to all rule making petitioners that the Commission will not tolerate an expenditure of its resources and the tying up of spectrum without clear and verifiable assurance that the proponent is ready, willing, and able to fulfill both its current commitment and all other outstanding commitments to file applications, to bid at auction, and to construct stations.¹³

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3120
Tel. 202-728-0400
Fax 202-728-0354

May 9, 2005

Respectfully submitted,


Peter Tannenwald

Counsel for Saranac Lake
Radio, LLC

¹³ SLR suggests that the Commission announce a policy that in the future, any party that makes a commitment to file an application for a new channel, whether a rule making proponent or just a commenter, will be required to set forth all other commitments then outstanding for which no filing window has yet been opened, and where windows have opened, all commitments made and fulfilled and all commitments made but not fulfilled, including by posting up front payments entitling the proponent to bid at auction. That is the only way that the Commission will be able to evaluate new commitments properly. Such an inquiry would be essentially the same as the question on broadcast applications forms (e.g., 301, 314, and 316) asking whether there are any unresolved character issues pending against any party to the application. Since the issues are unresolved, they are not necessarily an obstacle to grant, but the disclosure gives the Commission an opportunity to evaluate whether further analysis is appropriate.

Monday, May 09, 2005

Skywaves
Bethesda, MD

Dataworld FM Channel Study

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Job Title: Cumberland Head 264A

Safety Zone:	30.0 km (18.6 mi)
Safety dB:	3.0
Channel(s):	264 A
Coordinates:	N 44° 43' 12.0" W 73° 19' 12.0"
FM Translators excluded	

Dataworld FM Spacing Study

Title: Cumberland Head 264A

Channel: 264 A (100.7 MHz)

Database: FCC 5/4/2005 12:00:00 AM

Latitude: N 44° 43' 12.0"

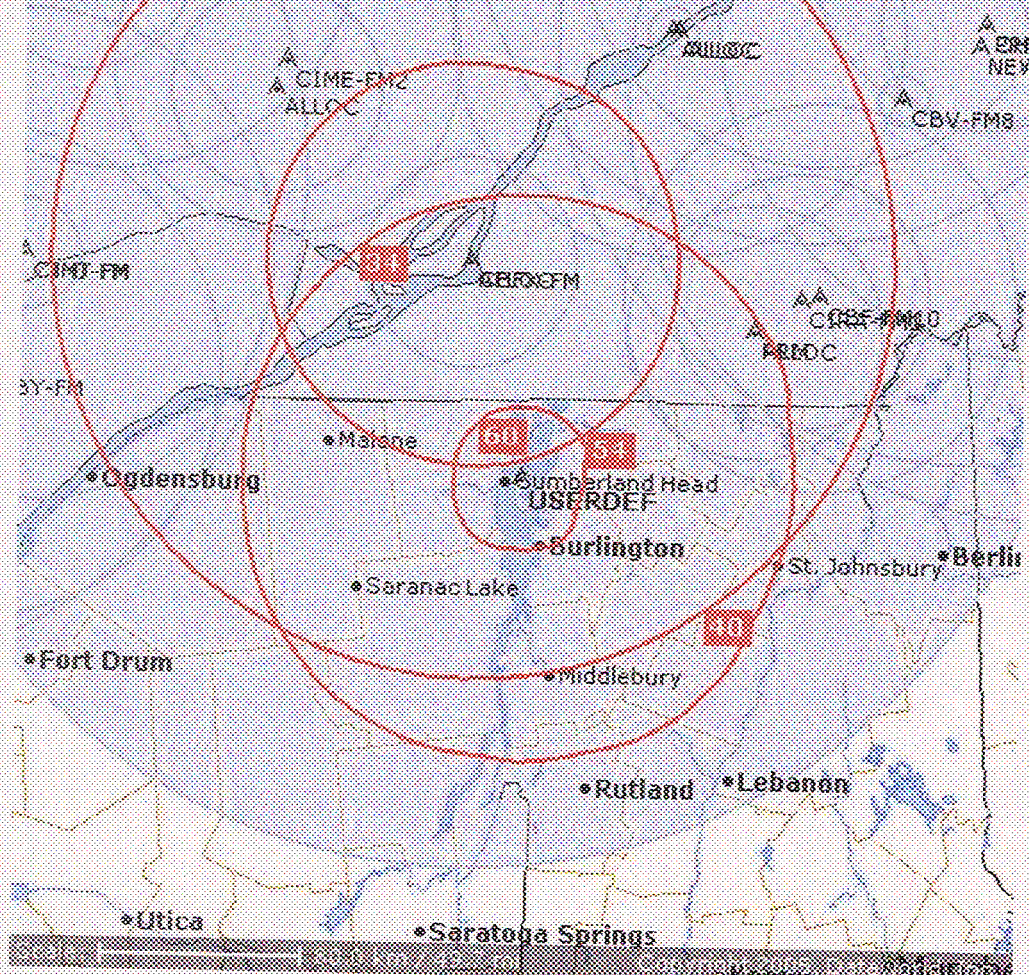
Longitude: W 73° 19' 12.0"

Safety Zone: 30.0 km

Call	Auth	Licensee name	Chan	HAAT(m)	ERP	Latitude	Br-to	Dist	Req
City of License		St	FCC File Number	Freq	HAMSL(m)	Longitude	-from	(km)	(km)
WCMD-FM	LIC	CHRISTIAN MINISTRIES, INC	210 A	180.0	0.94 H	N 44° 07' 32.0"	134.3	94.20	10.00
BARRE		VT	BLED-19960416KA	89.9	612.0	0.94 V	W 72° 28' 36.0"	314.9	84.20 CLEAR
WRUV	LIC	THE UNIVERSITY OF VERMONT	211 A	40.0	0.46 H	N 44° 28' 49.0"	160.6	28.24	10.00
BURLINGTON		VT	BLED-19961217KB	90.1	126.0	0.46 V	W 73° 12' 07.0"	340.7	18.24 CLEAR
ALLOC	VAC			261 A1		N 45° 25' 51.0"	344.9	81.89	42.00
LASALLE		QC		100.1		W 73° 35' 39.0"	164.7	39.89	CLEAR
ALLOC	VAC			262 A		N 44° 44' 54.0"	87.6	90.62	31.00
BARTON		VT	RM-9431	100.3		W 72° 10' 36.0"	268.4	59.62	CLEAR
ALLOC	USE	E.H. CLOSE	263 C3			N 43° 39' 07.0"	147.2	140.9	89.00
LEBANON		NH		100.5		W 72° 22' 14.0"	327.8	51.88	CLEAR
PRM	ADD		264 A			N 44° 43' 12.0"	0.0	0.000	115.0
CUMBERLAND HEAD		NY	RM-11200	100.7		W 73° 19' 12.0"	0.0	-115	SHORT
CBFFM			264 C1	251.0	100 H	N 45° 30' 20.0"	346.4	89.89	243.0
MONTREAL		QC	100.7			W 73° 35' 32.0"	166.2	-153	SHORT
ALLOC	VAC		264 A			N 43° 48' 33.0"	208.8	115.3	115.0
MINERVA		NY	100.7			W 74° 00' 41.0"	28.3	0.287	CLOSE
ALLOC	USE		265 C3			N 44° 18' 15.0"	129.7	72.14	89.00
BERLIN		VT	RM-9265	100.9		W 72° 37' 24.0"	310.2	-16.9	SHORT
ALLOC	RSV	NASSAU BROADCASTING III, L.L.C.	265 A			N 44° 01' 34.0"	170.7	78.12	72.00
MIDDLEBURY		VT	100.9			W 73° 09' 44.0"	350.8	6.123	CLOSE
WWFY	LIC	NASSAU BROADCASTING III, L.L.C.	265 C3	219.0	5.2 H	N 44° 07' 38.0"	134.4	93.88	89.00
BERLIN		VT	BLH-20001004AAA	100.9	650.0	5.2 V	W 72° 28' 48.0"	315.0	4.881 CLOSE
CBF10F			266 B	173.0	35 H	N 45° 23' 48.0"	56.7	139.3	78.00
SHERBROOKE		QC	101.1		35 V	W 71° 49' 54.0"	237.8	61.28	CLEAR
WCPV	LIC	CAPSTAR TX LIMITED PARTNERSHIP	267 A	243.0	1 H	N 44° 24' 12.0"	194.4	36.33	31.00
ESSEX		NY	BMLH-19990405KD	101.3	407.0	1 V	W 73° 26' 02.0"	14.3	5.333 CLOSE
ALLOC	USE	BRUCE M. LYONS	267 A			N 44° 19' 30.0"	186.7	44.19	31.00
ESSEX		NY	101.3			W 73° 23' 05.0"	6.6	13.19	CLOSE

>> End of channel 264 A study <<

Exhibit 2



Saranac Lake Radio LLC**Cumberland Head Allotment Proposal Analysis****Proposal**

Allotment Proposal, Cumberland Head, NY
N 44° 43' 12.0"
W 73° 19' 12.0"
Class A
ERP 6 kW 7.8 dbk
HAAT 100m

Short-Spaced Station

CBF-FM Montreal, QC
N 45° 30' 20.0"
W 73° 35' 32.0"
Class C1
ERP 100 kW 20.0 dbk
HAAT 251 m

Geographical

Distance 89.89 km

ANALYSIS 1**Signal from Proposal at CBF-FM Transmitter Site**

Distance 89.89 km
ERP 7.782 dbk
HAAT 100 m
f (50,10) signal 39.1 dbu

Signal from CBF-FM at Proposal Allotment Coordinates

Distance 89.89 km
ERP 20 dbk
HAAT 251 m
f (50,10) signal 57.2 dbu

ANALYSIS 2**Required separation to clear contours**


Proposed 60 dbu f(50,50)	28.3	km
CBF-FM 40dbu f(50,10)	167.4	km
Total	195.7	km
CBF-FM 54 dbu f(50,50)	82.0	km
Proposed 34dbu f(50,10)	112.6	km
Total	194.6	km
Requirement	195.7	km
Actual	89.9	km
Evaluation	SHORT	(105.8) km

CERTIFICATE OF SERVICE

I, Mary Jane Thomson, do hereby certify that I have, this 9th day of May, 2005, caused to be sent by first class United States mail, postage prepaid, a copy of the foregoing "Comments of Saranac Lake Radio, LLC" to the following:

Mr. Dana J. Puopolo
1434 – 24th St.
Santa Monica, CA 90404

Alan G. Moskowitz, Esq.
Kaye Scholer LLP
901 – 15th St., N.W., 11th Floor
Washington, DC 20005-2327
Counsel for LP Broadcasting Partnership



Mary Jane Thomson